IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL WRIT PETITION NO.1508 OF 2004

Shri Jayesh Shah,
residing at 13/14 Kanti
Terrace, 1st Floor,
Tejookaya Park,
Dr. Ambedkar Road,
Mumbai-400 019. .... Petitioner

- Versus -

State of Maharashtra .... Respondent

Shri J.A. Udaipuri i/b M/s. Udaipuri &
Co. for the Petitioner.

Shri I.S. Thakur, Addl. Public Prosecutor,
for the State.

CORAM: R.M.S. KHANDEPARKAR &
P.V. KAKADE, JJ.

DATED: APRIL 21, 2005

ORAL JUDGMENT (Per R.M.S.Khandeparkar, J.):

1. Heard. Rule. By consent, the rule is made returnable forthwith. The learned A.P.P. has placed before us all the records in relation to the FIR No.232/1998 along with the order dated 4-7-1998 stated to have been passed by the learned Metropolitan Magistrate, 30th Court, Kurla, Mumbai granting "A" Summary.

2. Though the petition has been filed on various grounds and the learned Advocate for the petitioner and the learned A.P.P. have referred to various aspects of

the matter, it is not necessary to consider all those points sought to be raised in the matter. Bare perusal of the so called order dated 4-7-1998 passed by the learned Metropolitan Magistrate granting "A" Summary apparently discloses that the same has been passed in the form of a rubber stamp, without considering the fact as to whether the case is made out for the grant of "A" Summary or not and without hearing the complainant before the grant of the "A" Summary. The materials on record nowhere disclose that the complainant i.e., the petitioner in the present petition, was served with the notice in relation to the application by the investigating agency for grant of the "A" Summary in the matter. It is well-settled that before considering the application of the investigating agency for the grant of the "A" Summary, it is absolutely necessary for the Magistrate to hear the complainant and thereupon on proper application of mind to the materials placed before him by the investigating agency, he should pass a reasoned order, either allowing or refusing the "A" Summary. In case of refusal of the "A" Summary, the Magistrate is not forbidden from directing further investigation in the matter. No such exercise has been done by the learned Metropolitan Magistrate before passing the so called order dated 4-7-1998. In fact the said order cannot be said to be a legal and valid order and therefore is liable to be quashed and set aside and

direction to be issued to the Magistrate to hear the petitioner as well as the investigating agency before passing an appropriate order on the application of the investigating agency for grant of the "A" Summary in the matter arising out of the FIR No.232/1998 which was lodged with the Matunga police station on 29-4-1998.

3. It has been stated that the jurisdiction which vested in the Metropolitan Magistrate, 30th Court at Kurla now vest in the 45th Court at Kurla. Accordingly, the further proceedings shall be before the learned Magistrate presiding over the 45th Court at Kurla.

4. The records placed before us are returned to the learned A.P.P.. As regards the request by the learned Advocate for the petitioner to furnish the copies of the records, the petitioner is at liberty to approach the concerned Metropolitan Magistrate who should pass appropriate order in that regard, in accordance with the provisions of law, if applied for.

5. In the result, the petition succeeds on the limited ground stated above. The order granting the "A" Summary, passed by the learned Metropolitan Magistrate, 30th Court at Kurla, Mumbai on 4-7-1998 in relation to the FIR No.232/1998, registered at the Matunga police station on 29-4-1998 is hereby quashed and set aside.

The learned Magistrate is directed to hear the petitioner and the investigating officer prior to disposing the application of the investigating agency for the grant of the "A" Summary and to pass a proper reasoned order. In case of refusal of the application, the learned Magistrate is not forbidden from issuing direction for further investigation. However, this should not be construed as a direction by this Court to reject the application and the application shall be decided on its on merits and based on the materials to be submitted by the petitioner and the investigating officer, and in accordance with the provisions of law. The petitioner/complainant and the investigating officer to appear before the learned Magistrate on 8-6-2005 at 11:00 a.m. for further proceedings in the matter. Notice in that regard is taken by the learned Advocate for the petitioner and the learned A.P.P. on behalf of the investigating officer. The learned Magistrate to dispose of the application as expeditiously as possible and in any case within a period of eight weeks from 8-6-2005. The rule is made absolute accordingly with no order as to costs.

(R.M.S. Khandeparkar, J.)

(P.V. Kakade, J.)